

201411045

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

DEC 19 2013



Uniform Issue List: 408.03-00

T: EP: RA: TI

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XXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXX

Legend:

- Decedent A = XXXXXXXXXXXX
- Amount 1 = XXXXXXXXXX
- IRA V = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
- Financial Institution B = XXXXXXXXXX
- Account W = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
- Financial Institution C = XXXXXXXXXX
- Account X = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX
- Financial Institution D = XXXXXXXXXXXXXX
- IRA Y = XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
- Financial Institution E = XXXXXXXXXXXXXX

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IRA Z = XXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Financial Institution F = XXXXXXXXXXXXXXXXXX

Amount 2 = XXXXXXXXXXXX

Taxpayer G = XXXXXXXXXXXXXXX

State H = XXXXXXXXX

Dear XXXXXXXX:

This is in response to your request dated September 5, 2012, as supplemented by correspondence dated July 12, October 24, two items dated November 13, November 21, and December 9, 2013, from your authorized representatives, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code") with respect to Decedent A. You are the executor of the estate of Decedent A. You also are the surviving spouse of Decedent A.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

You represent that Decedent A received a distribution of Amount 1 from IRA V maintained with Financial Institution B with the intent to create a rollover IRA account at Financial Institution C. You assert that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to a mistake made by Financial Institution C in failing to deposit Amount 1 into a rollover IRA account. You further represent that Amount 1 has not been used for any other purpose.

Decedent A maintained IRA V with Financial Institution B. On October 7, 2008, Decedent A received a distribution of Amount 1 from IRA V. On October 10, 2008, Decedent A opened Account W at Financial Institution C with instructions to Financial Institution C to put the funds in an IRA. On November 23, 2009, Decedent A discovered that Financial Institution C had not put the funds into an IRA as directed. You represent that Decedent A attempted to resolve the issue, but died on December 9, 2010, without having succeeded in transferring the funds to an IRA. You represent that Financial Institution C was acquired by Financial Institution D and that Account W became Account X held with Financial Institution D.

On January 19, 2012, a representative of Financial Institution D acknowledged in writing that Financial Institution C, had opened a standard

checking account rather than the IRA requested by Decedent A and that the funds intended for the IRA were erroneously deposited into the checking account. You subsequently transferred Amount 2 from Account X to IRA Y with Financial Institution E in your name, Taxpayer G, and you then transferred IRA Y to IRA Z with Financial Institution F in the name of Taxpayer G.

You represent that no one has withdrawn any part of Amount 1 except with respect to the transfers described above.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d) of the Code, any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3) of the Code).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) of the Code does not apply to any amount described in section 408(d)(3)(A)(i) of the Code received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) of the Code from an IRA which was not includible in gross income because of the application of section 408(d)(3) of the Code.

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) of the Code do not apply to any amount required to be distributed under section 408(a)(6) of the Code.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information you presented and documentation you submitted are consistent with your assertion that Decedent A's failure to accomplish a timely rollover of Amount 1 was caused by a mistake by Financial Institution C, which resulted in Amount 1 being deposited into Account W, a non-IRA account.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA V. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, were met with respect to such contribution, the contribution of Amount 1 into an IRA on behalf of Decedent A would be considered a rollover contribution within the meaning of section 408(d)(3) of the Code. Further provided that Taxpayer G would have been eligible to make a spousal rollover election with respect to such IRA created on behalf of Decedent A, the contribution of Amount 1 into IRA Y will be considered a valid rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

Finally, the scope of the executor's powers is a matter of state law. This ruling assumes that your actions in contributing Amount 1 into IRA Y set up in

Taxpayer G's name, were in accordance with the laws of State H and pursuant to your authority as executor of the estate.

No opinion is expressed as to the tax treatment of the transaction described in this ruling under the provisions of any other section of either the Code or regulations which may be applicable.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

If you wish to inquire about this ruling, please contact XXXXXXXXXXXX XXXXX (ID XXXXXXXXXXX) at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T1.

Sincerely yours,

*Carlton A. Watkins*

Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose

cc: XXXXXXXXXXX  
 XXXXXXXXXXXXXXXX  
 XXXXXXXXXXXXXXXX  
 XXXXXXXXXXXXXXXX